Single Bench

IN THE HIGH COURT OF JUDICATURE AT CHHATTISGARH.

Second Appeal No. 152/006.

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE.

APPELLANTS : Khorbhara, S/o Prahlad, aged about 43 years, Resident of Village and Tah. Bilha, Distt. Bilaspur (C.G.)
PLAINTIFFS

Versus

RESPONDENTS : 1- Parasram, S/o Tara Singh, aged about 80 years.
DEFENDANTS

2- Ashok Kumar, S/o Parasram, aged about 37 years.

Both Residents of Gram and Tah. Bilha, Distt.- Bilaspur (C.G.)

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(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...S.A.No.152/... **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	04-12-2006 Appellant **khorbhara** by Shri Parag Kotecha, Advocate. Heard on admission. The appellant is aggrieved by the reversal of the judgment and decree passed in Civil Suit Number-105-A/2002 dated 28-02-2003 of the Court of VIIth Civil Judge Class-II, Bilaspur in First Appeal No. 13-A/2003 by the Additional District Judge, Bilaspur vide judgment and decree dated 17-08-2005. Brief facts are that the appellant/plaintiff filed a suit for permanent injunction against the respondents/defendants on the ground that they were encroaching upon the land owned and possessed by him which was shown in the map annexed to the plaint. In the plaint, there were no pleadings as to the descriptions of the land. The map filed along with the plaint was also as vague as it could be. An objection to this effect was also raised by the respondents/defendants in the written statement. However, VIIth Civil Judge Class-II, Bilaspur vide judgment and decree dated 28-02-2003 in Civil Suit Number-105-A/2002 granted a decree for permanent injunction against the defendants. Aggrieved by the aforesaid judgment, the defendants preferred an appeal before the Additional District Judge, Bilaspur. Vide judgment dated 17-08-2005, the appeal was allowed while reversing the judgment and decree passed by the lower Court. The First Appellate Court held that the plaint map relating to identity of the suit land was vague and the plaintiff did not plead the description of Khasra Number of the land in the plaint also. The settlement deed referred to by the plaintiff in his testimony was also not pleaded. On these	

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premises, it was held that the plaintiff had failed to make out a case for grant of permanent injunction in his favour.

Shri Parag Kotecha, learned counsel for the appellant/plaintiff did not dispute that the defendants were the title holders of Khasra Number-125/1 area measuring 9 decimal in total which were purchased vide registered sale deed dated 21-01-1969 and 08-07-1969. It was also stated that in the lower Court, the defendants had also not raised any objection to the title of the plaintiff over the suit land bearing Khasra No.125/6 & 117/6. It was urged that the First Appellate Court erred in reversing the decree passed by the lower Court.

Having considered the rival submissions, I have perused the record. I am of the considered opinion that the finding recorded by the First Appellate Court is purely a finding of a fact based on proper appreciation of the evidence adduced by the parties and no substantial question of law arises for decision making in this Second Appeal. It is also trite to mention here that nowhere in the plaint the plaintiff did plead the description of the land sought to be encroached and the map filed along with the plaint was also as vague as it could be. The lower Appellate Court did not commit any error of law in reversing the judgment and decree passed by the lower Court.

In view of the fact that no substantial question of law is involved in this Second Appeal it is accordingly dismissed at the stage of admission. No order as to costs.

In view of above, M.(C.)P.No.593/2006 for grant of stay also stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge